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ABSTRACT

The potential for using case examples in the education of evaluators is paralleled to the legal case method of instruction currently used in the education of law students. Ways in which such cases are used in instruction are discussed. Types of information an evaluation case history might contain are then documented and the QUEMAC acronym is presented as a model of this. QUEMAC is comprised of a series of six points that should be incorporated in an evaluation: questions (issues); unquestioned assumptions (principles); event/object evaluated (case facts); answers/claims (decisions); concepts/conceptual structure (legal principles). Legal case history parallels appear in parenthesis. This model also requires the inclusion of procedural history for evaluation purposes. Three essential devices of the case method of instruction are discussed in terms of how they might be applied to the education of evaluators: (1) case-book; (2) student class participation; (3) problem-type examination items. In conclusion, it is suggested that implementation of such an instructional method may prove difficult since no system exists whereby evaluation case histories are written up, and the exposition of the logic underlying an evaluation is rarely given in an evaluation report. (AEF)

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No. 51 LEGAL EDUCATION AS A MODEL FOR THE EDUCATION OF EVALUATORS

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PREFACE

The Research on Evaluation Program is a Northwest Regional Educational Laboratory project of research, development, testing, and training designed to create new evaluation methodologies for use in education. This document is one of a series of papers and reports produced by program staff, visiting scholars, adjunct scholars, and project collaborators--all members of a cooperative network of colleagues working on the development of new methodologies.

How are legal cases used in the education of lawyers? What are the essential devices of the case method in the education of lawyers? What information might an evaluation case history contain? These and other questions are addressed in this report which examines the potential of using cases in the education of evaluators.

Nick L. Smith, Editor
Paper and Report Series

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Part I: The Use of Cases in Legal Education

Legal education in the United States (that is to say, the three-year programs at postgraduate-level law schools) has for many years been characterized both by the use of the Socratic method of pedagogy and by the study of reported case opinions as primary material. Neither this method of instruction nor this choice of study material is strictly necessary to legal education. One could, for example, simply lecture or develop programmed instruction about the history and development of generalized legal principles. Since reported case opinions are the raw material with which practicing attorneys must deal, however, at some point in the student's legal education it would be necessary to expose him to actual case opinions and to teach him to analyze and apply them. In most American law schools, moreover, reported cases are used, not merely to acquaint the student with their form and application, but as the sole source of learning what the law is. The Socratic method of instruction, by which the teacher asks the student a series of questions and requires the student to develop his own understanding of the underlying principles, complements the use of the case method.

The law student's textbooks are, appropriately enough, called casebooks. These consist almost entirely of reported case opinions, sometimes with questions following each case, and with citation to other cases with similar (or contradictory) results. Some casebooks include brief introductory and background materials; a few add commentary. They rarely, however, provide any structured presentation or straightforward statement of the basic legal principles to be learned. Rather, the student is to extract an abstract of those principles for himself by the careful reading and analysis of the case opinions.

The casebook author chooses the cases he wishes to present and organizes them in sections illustrating the various subject matters. The cases will typically be arranged to show the development of a particular concept by successive courts, or to contrast different courts' approaches to the same problem. Frequently a particularly important and influential case will be highlighted, and then followed by decisions of later courts interpreting and applying the principles enunciated in the earlier case to different factual situations. The cases are edited to some degree by the casebook author, but are not so heavily edited that only the crucial paragraphs of the opinion are printed. Rather, it is an important part of the law student's task to learn to analyze the case thoroughly and to discover which questions are most pressing and which arguments are most persuasive. The factual context which provides the basis for discussion of legal principles is also included in full; as noted, it is that factual context which colors and gives concrete meaning to the stated principles and provides a standard for their evaluation.

Under the most traditional and formal sort of legal education, the students are assigned a group of cases to read, analyze, and prepare. During the class period, one student will be called upon to orally present his prepared brief of the case. The student gives a summary of the most important facts; a synoposis of the procedural history of the case; a statement of the legal issues to be decided by the court; a recitation of the court's discussion and legal reasoning regarding those issues; and a statement of the court's holding and decision on those legal issues. The opinions of any dissenting judges are likewise cited and discussed. The student's particular statement of the legal issues and of the court's holding is frequently subjected to criticism. (The primary lesson to be learned here is the necessity of precise statement.) In addition, it is likely that the student will be asked questions regarding the judge's reasoning.

Once the assigned case has been thoroughly expounded and explicated, the professor may pose a hypothetical fact situation which varies either in character or degree from that presented by the assigned cases themselves. The student's task then is to decide how the court would decide the hypothetical case, supporting his answer with particular language from the reported case, if possible. Often the professor will propound a series of questions. That question sequence is designed to elicit answers that illustrate the crucial factual elements of the decided case, as well as the breadth or narrowness of its reasoning.

This pedagogical technique emphasizes, in the most concrete fashion, the notion that a court's decision in a given case is limited in its coercive effect to the immediate parties to the suit and to the particular facts of that litigation. The court's reasoning, however, may be applied to analogous, although varying, factual patterns. The student must determine whether the law professor's hypothetical fact situation is sufficiently analogous to that presented in the decided case, that the application of the court's reasoning will produce the same result or whether, in contrast, the hypothetical facts are distinguishable in a way that compels a different legal result.

The usual law school course examination is designed along the same lines and is meant to test the student's development of these skills. The exam consists of several complex hypothetical fact patterns. For each, the student is required to fully analyze the facts and to recognize the various legal issues that they raise. He must then set forth the applicable principles of law, as derived from the decided cases, and apply them to those hypothetical facts, demonstrating how those facts are analogous to or distinguishable from the reported cases. The student is expected to make all of the various arguments for the position each hypothetical party would take. Finally, the student is to assess the persuasive weight of those arguments in the light of decided cases and to determine the likely result. The answer is evaluated, not for the substance of the student's ultimate result, but on the quality of his reasoning and skill in defining

issues, recognizing factual distinctions, and apply legal principles.

In addition to the application of legal principles to novel fact situations, the casebook author and the law professor also emphasize the historical development of a legal principle through examination of various courts' handling of the same factual question. Here is Case I, and here is Case II, decided 20 years later and dealing with a similar factual situation. Case II discusses those principles set forth in Case I. Does Case II emphasize different aspects of the situation? Does it suggest subtle refinements of the legal principles? Does Case II broaden the application of those principles to truly dissimilar facts, or does it restrict those principles to the facts of Case I? Does the latter case consciously or unconsciously reflect changed social, political, or economic perceptions? Or does it simply follow the rule of Case I, with or without consideration of such factors?

An essential element of the case method, then, is a constant analysis and criticism of the court's reasoning. The professor's questions are intended to stimulate the student's independent evaluation of the judge's opinion according to established standards. On the one hand, the decision may be criticized on purely logical grounds; the judge's analysis may make an inductive leap without adequate support, therefore failing to withstand logical scrutiny. The opinion is then flawed in its persuasive and precedential effect. Or it may be that the student is asked to criticize the case on purely legal grounds--to assess the particular judge's own understanding and statement of legal principles as expressed by other courts.

Alternatively, it may be that a decision can be faulted on policy grounds. The court may have failed to take account of salient social or economic goals. A court may inject its own view of things into a decision and enforce compliance with that view. Or the decision may backfire in the face of its intended effect. For example, a decision that was intended to protect low-income consumers by making it more difficult for sellers to

reclaim installment plan goods, may simply encourage sellers to deny credit to poverty-level consumers altogether. Successful, effective case criticism of this sort obviously demands close reading on the part of the student and considerable depth and breadth of social and political understanding on the part of the professor. The challenge to the teacher is to translate his own knowledge into questions that will stimulate a similar understanding in the student.

It is obvious that the use of cases as original material to be learned lends itself well to the use of the Socratic technique of pedagogy. Law professors who take the Socratic technique seriously will not articulate legal concepts or principles, but would rather require students to formulate and generalize their own principles by questioning them about various aspects of the assigned cases. Obviously, the study of the raw material of law does not mandate this type of instruction; it may often be appropriate for the teacher to organize and summarize the major points in the development of a particular concept and to articulate a rule, or even a coherent theory, which describes and explains the results in a set of cases. Even so, the emphasis in legal education today is still upon a student's development of his or her own understanding of an area of law, not only through the study of recorded cases, but also through the application of the Socratic technique to that material.

The successful integration of the Socratic technique with the case method clearly requires tremendous skill on the part of the teacher. Proponents of this technique emphasize the value of the inherent student participation for his own learning, but it must be remembered that this participation, although active, is nearly always responsive in character. It is the professor who initiates, who formulates the questions and elicits the student's response; the response is necessarily shaped and limited by the question. The professor's task is to translate his own understanding of the points to be made into a series of questions--that is, questions which have been organized into some logical sequence--which will allow an attentive student to

recognize those points and to extrapolate that organization. Any successful teacher must effectively integrate student questions, responses, and comments into his presentation of material, but that skillful integration is especially crucial where the subject material is presented almost entirely in the form of questions. The law professor poses a question; the student responds; the professor must recognize the student's level of understanding, meet it, and then elevate it. The necessity of these universal teaching skills is magnified by the Socratic technique.

The combination of the case method and the Socratic technique has a dual purpose: first, to instill in the student an accurate and coherent set of legal principles; and second, to train the novice in the application of those principles to unique factual situations. The combination can be a most inefficient, and sometimes wholly ineffective, means of teaching complex principles. It is only too easy for even a diligent law student to miss crucial distinctions or to omit an important concept from his mental outline altogether. The reason for these students' confusion is the lack of synthesis and clear direction in both the instructional materials and in the pedagogical method. The latter, in particular, is based on the theory (which is more a matter than faith and of empirical demonstration) that students in some sense learn better when they teach themselves. Now, it may be true that learning to teach oneself (e.g., learning to read a case report critically, to analyze and criticize its premises, and to generalize principles from its results) is itself the lawyer's most valuable skill. It may also be true that the most efficient way to develop that skill is by actually doing it under a professor's critical supervision. Nonetheless, it is not unusual for a student to mis-learn a concept, and even, through his prodigious efforts to understand and apply that concept, to reinforce ideas which are simply wrong. Where, as with law, there is a relatively large body of accepted, highly complex and subtle principles to be mastered, the combination of the case method and the Socratic technique is often worse than

simply inefficient in teaching those principles; it can be squarely counterproductive.

From these students' point of view, the corollary of this inefficiency is frustration. The successful use of the Socratic technique depends heavily on adequate student preparation for the professor's questions, and adequate preparation is tremendously time-consuming. Unfortunately, for many students there is simply never enough time to devote to careful reading and analysis of all of the assigned cases. There is no such thing as "skimming" a case; it must be read slowly and carefully, usually several times over, with notes taken and points recorded. And this must all be done by oneself, for oneself, in order to construct, concept by concept and principle by principle, one's own mental view of that particular area of law.

Moreover, there is never any guarantee for the student that time diligently spent in the close study of a series of cases will yield a proportionate share of understanding. With only minimal guidance from the material itself, the student is expected to generate a cohesive structure of legal principles. As often as not, however, the professor's presentation of that same material builds a complete structure, one which the student does not recognize. Ironically, the harder a student works to prepare, the more frustrated he may become when his laborious built structure does not match the professor's. The student who has merely read through the assigned material, not taking time to generalize rules, may be better able to understand the teacher's point. The problem of having to teach oneself a very large body of complex, difficult material, in that it is time-consuming but with no guarantee of mastery, can be entirely irritating--and to such a degree that it becomes a further hindrance to learning.

It is easy to imagine how much energy and ego go into the student's preparation. Imagine further the frustration of discovering, after so much effort, that this painfully devised mental picture is out of focus, or perhaps of the wrong landscape altogether. Law students often feel themselves caught in a three-way bind: No matter how long and hard they prepare, they

can never glean all the fine points from a case; if they prepare too little, trying to grasp simply the points of the case, they cannot follow many of the teacher's questions or much of the class discussions; and if they prepare diligently and develop their own detailed understanding of a case, they run the risk of learning erroneous principles too well. The result is more frustration.

Too, law students tend to be a homogeneous group, at least in the sense that they have done exceedingly well in undergraduate school. In the main, they come to the school confident in their ability to master a body of subject material, to learn the answers. For many of them the combination of the case method and the Socratic technique is a source of tension in its insistence on the ambiguity and non-finality of every answer. Learning to tolerate this uncertainty is perhaps one of the most difficult lessons for the law student, and it is aggravated and intensified by the pedagogy employed. This is not to say that this is a disadvantage of the case method/Socratic technique. On the contrary, it may be a distinct advantage, to the extent that this sort of negative capability is an essential professional attribute of the lawyer. It is to say that, where law students are unaccustomed to this aspect of learning in their undergraduate education, it can be an emotionally difficult adjustment.

The student's undergraduate experience may not fully develop all the learning skills required under the prevailing legal pedagogy. Law students have already learned, only too well, how to learn from textbooks and lectures. They may have had some experience in independent study, but even that is likely to have been structured for them. With this sort of instructional background, it can be a wrenching adjustment to be required to literally teach oneself complex, detailed concepts with virtually no guidance.

It seems to me that the law student is called upon to see three distinct learning skills. First, he must comprehend vast quantities of detailed, complex subject matter; undergraduate

study may have developed this ability fairly well. Secondly, the student is required to develop his independent organization of that material, and further, to analyze and synthesize this body of material in a manner that is unique to him. Here again, the student may have had the benefit of this experience as an undergraduate in those courses of study which emphasize the process of reasoning more than the final product, in which no "right answer" is recognized. Thirdly, however, the law student is expected to apply his own mental structure, his own process of reasoning, to completely new factual situations and to analyze the likely results. It is this application skill which is likely to be new to most law students and which is central to the learning task required of them. People who have always identified themselves as "good students" suddenly find themselves expected to use skills which they may never have had to develop. Again, the result is frustration. For adult students with a successful education career behind them, this frustration at not being able to learn can itself become an obstacle of major proportions.

On the other hand, it is certainly true that this learning to teach oneself is the fundamental skill of a lawyer; and if the products of our undergraduate schools do not have this skill upon entering law school, then the law school is obligated to somehow develop that skill. If, as noted above, law schools use the case method both to teach legal principles and to train students how to apply those principles, then the latter goal, at least, is fairly well served.

In the day-to-day practice of law, lawyers must deal with "raw" cases; they must decide how a reported decision bears upon the factual circumstances their clients present to them. By studying cases themselves, students are forced to analyze the same material that lawyers must deal with. They learn to analyze a case by doing it and by having that analysis criticized; they learn to apply the case's principles to different facts by doing so and having that application corrected. This is not to say that the case method could not be considerably refined and

improved over its present practice. For example, that process could be done more efficiently and less painfully with more individual instruction than is now typical, but that is largely a matter of economics and not of pedagogy. For learning how to use cases--and that is an indispensible skill for a lawyer--the Socratic use of the case method is surely adequate and efficient, if not actually mandatory.

In addition, the socializing aspect of the case method should not be discounted. The law professor's annoying insistence on always asking one more question, adding one more wrinkle, does have a cumulative effect on the student. After three years of facing constant dissatisfaction with the easy answer, the student does become deeply convinced of the lack of finality to any legal issue. The medium bears an important message, i.e., to keep testing an argument by taking it one more step. Moreover, the student comes to believe in a sort of legal relativity, in the idea that results do and ought to differ according to differing facts and policies, even though one encompassing principle is supposed to govern all of those differing circumstances. In addition, typical law school instruction teaches, often unconsciously, a healthy disregard for the legitimacy of a wholly logical approach to human problems. A law school class can be an excellent demonstration of the limits of rationality. It is a lesson that lawyers should learn early and remember long.

On a more objective level, it is clear that the use of cases is better suited to teaching some aspects of law than others. Obviously, areas that are seldom or never the subject of litigation cannot be conveyed through case study. Such areas include the function and responsibility of the organized bar; ethical considerations in dealing with clients and conducting a case; the efficient organization of the courts; the numerous practical problems of running a law firm. The proper drafting and interpretation of legislation is likewise unsuited to the case method. Further, the study of cases is a wasteful and inadequate means of grasping the historical development of legal concepts and of recognizing and assessing the unexpressed impact

of social, economic, and political factors on judicial decision-making. The primary shortcoming of legal education has not been that the case method cannot do everything well, but that too often no alternative has been provided to fill these unavoidable gaps.

What can be successfully taught in this way, again, are both a body of principles and their application to particular factual situations. Further, the use of actual cases does shed some light, however unevenly, on the actual practices of daily life: commercial and business practices, family situations and customs, police policies, general culture. This adds an extra degree of interest to the study of otherwise dry legal principles. And by constant exposure to various factual patterns, the student can gain some intuitive grasp of the situations that give rise to legal problems.

Finally, the method also stimulates independent critical thinking, and gradually some confidence in one's own ability to deal with the primary materials of the legal profession. The successful use of the case method can be highly stimulating intellectually. Perhaps it is best after all to emphasize the strengths of the case method in legal education, recognizing its shortcomings and compensating for those by supplementation with other techniques.

Part II: The Education of Lawyers as a Parallel to the Education of Evaluators

A. What Information Might an Evaluation Case History Contain

If case histories are to be used in the education of evaluators, then it is necessary to look at what evaluation case histories might be like

The format of the legal case history is as follows:

Name of Case
Case Summary
Headnotes
Opinion of the Court

An evaluation case history might follow a similar format. The brief summary provides quick, ready information on what the case is all about.

The headnotes form part of the categorization system. Headnotes are sentence-length statements of the principles of law discussed in the opinion. The headnotes are numbered, and those numbers are printed at appropriate points within the text of the opinion itself so that the researcher can quickly find the section of the opinion cited in the headnote. In an evaluation case history, value principles correspond to legal principles. It is uncertain whether the headnotes described for legal case histories would be appropriate for evaluation case histories.

A judicial opinion is divided into five parts and each will be discussed in turn:

1. The procedural history of the particular action;
2. A statement of the facts of the case;
3. A statement of the legal issues to be decided by the court;
4. A discussion of legal principles as set forth in prior decisions and now applied to the facts of the present case;
5. The result reached in the case.

1. The Procedural History

A legal opinion will state at the outset whether this action is before the trial court or before the court of appeals. Moreover, it will be stated whether one of the parties have asked for a decision as to only a distinct part of the case at the present time. If it is an appellate decision which is being reported, it will be carefully noted, not only which party won before, but also which issues have been preserved for review by the parties. This suggests that an evaluation case history report on prior evaluations (if any) and indicate if the evaluation issues in the present evaluation are the same or different from prior evaluations. The procedural history of a court action must be thoroughly set forth, because that procedure legally limits the issues presented to the court for decision at this juncture. Correspondingly, the aspects of the evaluation, which limit the evaluation issues dealt with by the evaluator, can be set forth. Examples of these aspects are as follows:

(a) The charge-negotiations-contract. The charge given the evaluator by the client including any restrictions placed on the evaluator in the negotiations and contract (if any) will limit the issues dealt with.

(b) The audiences. Who the audiences are and what are their questions will determine issues.

(c) The resources. Usually the evaluator only has resources to deal with a few major issues. Resources include money, time, and personnel to carry out the evaluation.

2. The Facts of the Case

A judicial opinion includes a presentation of the facts of the case. The facts of a case must be relevant to the legal issues of the case. Not all cases are tried by a jury, but in those which are, the jury receives the evidence, evaluates it, and "finds the facts"--i.e., decides which version of the facts presented is the true version. The judicial opinion, then, will set forth the facts as found by the jury.

In a similar way, an evaluation case history would contain a statement of the facts as found by the evaluator. As with the law, the facts must be relevant to the issues of the case. For an evaluation, the facts are not decided by a jury but are a by-product of the methodology used by the evaluator. If the evaluator has used an experimental-control design, the facts will be about measured outcomes. If the evaluator has used a responsive approach, the facts are likely to be about processes, transactions and human judgments. Hence, besides describing the facts, an evaluation case history should describe the methodology used by the evaluator.

The lawyer's presentation of a set of facts is governed by the rules of evidence. These rules have been developed to allow the tryer of fact to consider only evidence that is relevant, reliable, and not unduly prejudicial. The rules of evidence are also law. They are legal principles developed by the courts for their own use. Questions as to the admissibility of a given bit of evidence are frequently the subject of written judicial opinions.

In evaluation the rules of evidence is the knowledge which are embedded in the methodology. This is another reason why the methodology used should be indicated. Evaluators have rarely considered the question of the admissibility of evidence that may be prejudicial in evaluating an entity but is not relevant to the issues under evaluation. As with the law, the question of the admissibility of a piece of evidence could be part of an evaluation case history.

b. The issues

The legal issues are the focus of a court's decision. Stake and Easley (1978) explain what is meant by an evaluation issue.

> *An issue is a circumstance about which people disagree. It usually involves a condition having some features causing (or believed to cause) certain effects. These effects are valued differently by different people--so they disagree as to whether and how the condition should be changed.*

The ingredients for an issue, then, are the conditions, the effects, the relationships between condition and effect, the different valuing, and the alternatives among courses-of-action for changing conditions.

Stake (1975) explains how he identifies issues and uses them. He also gives examples of issues.

> Instead of objectives, or hypotheses as "advance organizers" for an evaluation study, I prefer <u>issues</u>. I think the word "issues" better reflects a sense of complexity, immediacy, and valuing. After getting acquainted with a program, partly by talking with students, parents, taxpayers, program sponsors, and program staff, the evaluator acknowledges certain issues, problems, or potential problems. These issues are a structure for continuing discussions with clients, staff, and audiences, for the data-gathering plan. The systematic observations to be made, the interviews and tests to be given, if any, should be those that contribute to understanding or resolving the issues identified.
>
> In evaluating MSTI, a summer institute for high school students, Craig Gjerde and I became aware of such issue-questions as:
>
> Is the admissions policy satisfactory?
>
> Are some teachers too permissive?
>
> Why do so few students stay for afternoon?
>
> Is opportunity for training younger teachers well used?
>
> Is this institute a "lighthouse" for regular school curriculum innovation?

What would correspond to the legal issues would be what Gowin (1979, p. 2) calls the telling questions of an evaluation. *According to Gowin (1979) telling questions are the most significant questions of an evaluation and are few in number. They must be distinguished from technical questions. Telling questions "tell on" the <u>context</u> assumed or made explicit by the evaluation. Telling questions are not always found in evaluation studies; the only questions asked are technical questions. In some evaluations, telling questions are asked but not answered by the evaluations. Telling questions may not necessarily be made explicit in an evaluation study but may have to be inferred. In*

an appraisal of a Head Start evaluation, Cowin (1979) indicates that the telling questions are as follows.

(a) Are children who participated in Project Head Start better prepared for kindergarten than those who did not participate?

(b) Can racism in America be combatted through the means of schooling?

4. The Conceptual Principles

Legal principles, when applied to the facts of a case, result in a decision regarding the legal issues. The discussion of legal principles is central to the case opinion. The discussion is intended to be a logical, neutral exposition of legal principles, derived from precedent (or from the statutory text) and reinterpreted in light of the particular facts faced by the court.

It is not immediately clear what aspect of an evaluation study would correspond to legal principles. The use of legal principles involves logic and reasoning, and represents the conceptual side (in contrast to the factual side) of a legal opinion. Thus a discussion of the conceptual aspects of an evaluation would correspond to the discussion of legal principles.

A discussion of the conceptual aspects of an evaluation could involve some of the following suggestions by Cowin (1979). An analysis of the key concepts of the evaluation study could be carried out. The telling questions themselves usually contain two or more key concepts. Some concepts will be more important than others. Some concepts will subsume others. It is possible to draw a concept map by arranging the concepts in an order with the most powerful ideas at the top of a sheet of paper and the subordinate ideas towards the middle of the page. The operational concepts, those closest to the events of interest to the evaluation, will appear towards the bottom of the page.

Under the conceptualization of an evaluation will fall assumptions. Usually an evaluation is forced to make several

assumptions. An evaluation case would explicate the major assumptions of an evaluation.

The pattern of reasoning, the main arguments and the logic of the evaluation study can be explicated. There will be two types of claims made by an evaluation study--knowledge claims and value claims. The reasoning that leads to these claims can be discussed.

We believe that there is a logic of justifying value judgments or claims. This logic will be briefly discussed since such discussion rarely occurs in the evaluation literature. The discussion is based on a chapter by Coombs (1971).

When an evaluator makes a value judgment, the evaluator makes a commitment to: (1) a value principle, and (2) a set of facts about the value object which shows that the principles applies to the value object. The facts and the value principle comprise the premises of a deductive argument having the value judgment as its conclusion. The value object is the entity being evaluated. ...ing a value judgment commits the evaluator to a value ...principle because the evaluator's judgment logically implies a ...principle. If an evaluator says that a certain reading program ...is good, the evaluator makes a commitment to the value principle ...that any reading program like this one is good. It would be ...logically inconsistent to assert the judgment and to deny the ...value principle. The precise nature of the value principle ...implied by any judgment is indicated by the facts wnich are given ...to support the judgment. Suppose that an evaluator says this is ...a good reading program because the students improve on a test of ...reading achievement and become more interested in reading. If ...increased achievement and interest are what make this a good ...reading program, it follows that any reading program with these ...same features must be regarded as good. The value principle ...implied by any judgment relates the supporting facts to the ...evaluative term used in making the judgment. In the example ...above, the value principle relates facts about achievement and ...interest to the evaluative term "good".

We know of no evaluation report that clearly sets forth the logic of the evaluative reasoning. The following example taken from Coombs (1971) is outdated, but still an example of evaluative reasoning. Suppose an evaluator is trying to decide whether or not the U.S. ought to withdraw from the war in Vietnam. Suppose that the evaluator accepts the following facts (f) and criteria (c).

(f) 1. The war in Vietnam is primarily a civil war.

(c) 1. One country ought not enter into the civil wars of other countries.

(f) 2. U.S. withdrawal will result in a substantially reduced rate of killing.

(c) 2. It is wrong to kill or to cause a large number of killings.

(f) 3. U.S. withdrawal would reduce the level of civil strife in the U.S.

(c) 3. A stable peaceful society is a good thing.

(f) 4. U.S. withdrawal would free U.S. resources which could be used to cope with pressing social problems in the U.S.

(c) 4. It is desirable for a society to have the resources available to handle pressing social problems.

(f) 5. U.S. withdrawal would result in a repressive, communistic society in South Vietnam.

(c) 5. Illiberal societies are undesirable and immoral.

(f) 6. The U.S. has committed itself to defending South Vietnam against takeover by the communists.

(c) 6. A nation ought to honor its commitments.

(f) 7. U.S. withdrawal would be construed as a sign of weakness and lack of resolve.

(c) 7. A nation ought not let others think it is weak or irresolute.

Suppose that the evaluator comes to the conclusion that the U.S. ought to withdraw from the Vietnamese war. Suppose that the evaluator comes to this decision on the basis of the first four facts listed above, and in spite of the last three. The evaluator's judgment implies a complex value principle to the effect that a nation ought not be involved in a civil war to save a country from a repressive government if that involvement

increases the level of killing in the war and diverts the nation's attention from pressing social problems.

The facts used in arriving at a value judgment must be relevant. To be relevant to a value judgment, a fact has to meet two conditions: first, it must be a fact about the entity evaluated, and second, it must be a fact to which the evaluator ascribes some value rating. This value rating is know as the value criterion. In the above example, each of the facts were about the U.S. and the war in Vietnam. In addition each fact had a value criterion associated with it.

What is the difference between a value principle and a value criterion? Value criteria are brought to and are involved in the making of the value judgment. A value principle emerges as a product of the value judgment. It is only after a value judgment has been made and the reasoning given for it that we know what value principle is implied by the judgment. Each value criterion provides the basis for evaluating one particular feature of the value object; each feature of the value object is evaluated separately. A value criterion does not provide the basis for evaluating the value object as a whole. In contrast, the value principle implied by the value judgment does apply to the value object as a whole.

In the law, Y set of legal principles, applied to X set of facts, leads to Z legal judgment. With evaluative argument, Y set of value criteria associated with a corresponding set of facts X, leads to Z value judgment which implies W value principle. The previous two sentences indicate the correspondence and contrast between legal argument and evaluative argument. Evaluative argument is rarely explicated in an evaluation report, but this could be done in an evaluation case history.

5. The Decision

The court renders its decision: Y set of principles, applied to X set of facts, yields Z result. Corresponding to the

decision would be the answers given and claims made by an evaluation study. Gowin (1979, p. 2) suggests the following questions. What answers were given to the telling questions? Which questions did the evaluator know he or she failed to answer? Which answers did the evaluator give to questions he or she failed to ask in the beginning? What critical limitations was the evaluator aware of? What claims beyond the original questions did the evaluator make?

Summary of Information an Evaluation Case Might Contain

The information that might be presented by an evaluation case history could be partly summarized under the acronymn, QUEMAC (Gowin, 1969). QUEMAC stands for a series of six questions that can be asked of any evaluation. These questions, when answered, give a sense of the whole structure of an evaluation study. This structure is the pattern of ideas or concepts showing what has to be thought about to make sense of an evaluation. QUEMAC is a form of meta-evaluation. The six aspects of an evaluation that QUEMAC stands for are as follows. In parentheses are shown the corresponding aspects of a legal opinion.

- Q Questions (The Legal Issues)
- U Unquestioned Assumptions (The Legal Principles)
- E Event or Object Evaluated (The Facts of a Case)
- M Method (The Facts of a Case)
- A Answers/Claims (The Court's Decision)
- C Concepts/Conceptual Structure (The Legal Principles)

What is missing from this six-point list is references to procedural history. This needs to be in the information supplied by a case history. The information supplied under the above six categories plus the procedural history should not be extensive. What should result is a brief, structured description of an evaluation. The writer of the case history should expand on anything that is new or unique to an evaluation. Judges, with the possible aid of their law clerks, write up their legal case histories. Correspondingly, evaluators can write up their

evaluation case histories. However, QUEMAC is flexible enough that persons not associated with an evaluation can read the evaluation report and write up an evaluation case history.

B. Essential Devices of the Case Method

While the case method of instruction has varied considerably in different courses, under different teachers, and in different law schools, three devices have generally been deemed essential: (1) the casebook; (2) the participation of students in the class discussion; (3) the problem type of examination. Each of these has its variation.

1. The Casebook

A casebook of evaluation case histories could act as

(a) an alternative or supplement to practical experience;

(b) an alternative to reading evaluation reports

It is instructive to look at what constitutes evaluation training. Gephart and Potter (1976) carried out a survey of institutions of higher education which offer training in evaluation. Eighty-one of the 119 institutions surveyed responded to the questionnaire. At least 52 percent of the institutions which responded regarded courses in evaluation as being solely concerned with measurement and statistics. These institutions did not teach evaluation theories or models. The use of a casebook of case histories by these institutions would broaden the meaning of evaluation. At least 46 percent of the institutions required students to carry out some kind of practical training in evaluation. Practical training is often limited to one or two evaluations. The use of a casebook of case histories by these institutions would supplement the practical experience of students, because it would describe a broad range of evaluations. There is a physical impossibility of providing for all the students in the class ready and convenient access to

the original reports in the library. The casebook saves wear and tear on the library, and on the student, too. An evaluation case history is a summarized form of the original evaluation report and, thus, is more convenient and less time consuming to read. The evaluation case history is written with the evaluators as audience, whereas the original evaluation report is written for the clients. Consequently, the logic and methodology will be laid out more clearly in the evaluation case history since the writer will have in mind the evaluators as audience.

If one asks: What cases are included in a legal casebook; what excisions are made from the original report; how are they arranged; what materials are included with them?--one finds considerable diversity in theory and practice. An evaluation casebook could include a broad range of cases or could include cases on the one theme, such as Title 1 evaluations. The casebook author could choose the cases he wishes to present and organize them in sections, illustrating the various subject matters. The cases could be arranged to show the development of a particular concept or to contrast different evaluators' approaches to the same problem.

The cases could be edited to some degree by the casebook author, but not so heavily edited that only the crucial paragraphs of the opinion are printed. Rather, it would be an important part of the evaluation student's task to learn to analyze the case thoroughly and to discover which questions are most pressing and which arguments are most persuasive. The factual context which provides the basis for discussion of the value principles is also included in full. It is the factual context which colors and gives concrete meaning to the stated principles.

2. The Class Discussion

Student participation in the class discussion is an essential feature of the case method. It is a substitute for an orderly and explicit presentation of the teacher's ideas about the

subject matter. A student is asked to summarize orally a case in the book; the teacher asks him questions about it or puts to the students a hypothetical case. The student is called upon to defend the student's decision in relation to the case in the book or other cases. The hypothetical case, skillfully chosen by the teacher, thus becomes one of the chief instruments for pulling out the significance of the main case and extending or limiting its doctrine or principle. The teacher, like Socrates, asks more questions than either the teacher or the student can answer. Socratic questioning could be used in relation to the logic of evaluation case histories. The logic of the case involves the choice of facts and their attendant value criteria, which leads to the value judgment. A value principle emerges as a product of the value judgment. Class discussion could focus on the choice of facts and their attendant value criteria as well as on what value principle emerges as a product of the value judgment.

Another variation in the class discussion is the student's statement of the case. The student could be asked to summarize the facts, the evaluation issues, the conclusion of the evaluator, and the reasons which led the evaluation to this conclusion.

3. The Examination

The case method course calls for a hypothetical-case type of examination. The best skill required for the hypothetical-case-essay examination is the ability to analyze the facts and to see all the "points" or evaluation issues involved. The examination could accomplish this by making the statement of facts rather complicated, so that a half hour per question is allowed for answering. Part of the examination should be of the essay type, in order to test the ability to construct a reasoned argument about a set of facts.

C. Conclusion

The legal case method can be used as a model for the education of evaluators. However, the fit is not exact, since in law one case is used as a precedent for the argument that is used in another case. The notion of precedent is not important in evaluation. What is concluded in one evaluation case is not regarded as precedent for what is concluded in another case.

The legal case represents the solution to a problem. It is not a problem to be solved. In contrast, in business education the case represents a problem to be solved. In evaluation the case could represent the solution to a problem, making a value judgment.

It might be difficult to write up an evaluation case history if it is to include the reasoning of the value judgment. This is because (a) no value judgment was made in the evaluation, or (b) the evaluator did not make a clear statement of the logic which led to the value judgment. In contrast, in the law the case gives the logic which was used in coming to a legal decision.

The barrier to using the legal model in the training of evaluators is that, at present, no system exists by which evaluation case histories are written up. Evaluation reports could not be used because they rarely give an exposition of the logic of an evaluation. If the legal case method is to be used as a model for the training of evaluators, then several evaluation case histories need to be written up. Section A above gives an exposition of what an evaluation case history might be like. Section B discusses the essential devices of the case methods, and how they might be applied to evaluation. The conclusion is that legal education can be used as a partial model for the education of evaluators.

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